

05/24/2006 17:13 FAX 12126619491

002/017

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

DAVID CHANG,

Plaintiff,

-against-

CHARLES KOO,

Defendant

Index No. 601847/06

Date Purchased: 5/24/06
Filed on: 5/24/06

SUMMONS

NEW YORK
COUNTY OF NEW YORK

MAY 24 2006

NOT COPIED
WITH COPY FILED

To the above named Defendant:

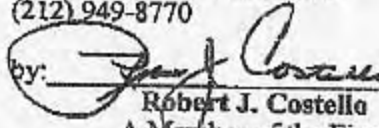
You are hereby summoned and required to submit to plaintiff's attorney your answering papers on this motion for summary judgment in lieu of complaint within the time provided in the notice of motion for summary judgment in lieu of complaint annexed hereto. In the case of your failure to submit answering papers, summary judgment will be taken against you by default for relief demanded in the notice of motion for summary judgment in lieu of complaint.

The basis of the venue designated is the execution of the agreement in New York City for the payment of money.

Dated: New York, New York
May 24, 2006

LEVY, TOLMAN & COSTELLO, LLP
Attorneys for Plaintiff
630 Third Avenue
Office and Post Office Address
New York, New York 10017
(212) 949-8770

by:


Robert J. Costello
A Member of the Firm

05/24/2006 17:14 FAX 12126619491

003/017

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK_____
DAVID CHANG,

Plaintiff,

V.

CHARLES KOO,

Defendants.

Index No. 6D1847/06

NOTICE OF MOTION FOR
SUMMARY JUDGMENT
IN LIEU OF COMPLAINT_____
Sirs:

PLEASE TAKE NOTICE, that upon the annexed affidavits of Robert J. Costello and David Chang sworn to on May 24, 2006, and upon the attached exhibits, the plaintiff will move this court in Room 130 Motion Submissions Part at the courthouse located at 60 Centre Street, New York, on June 30, 2006, at 9:00 a.m. or as soon thereafter as counsel may be heard, for an order pursuant to CPLR 3213 directing the entry of judgment for the plaintiff and against the defendant in the amount of \$500,000.00 with interest from July, 2003, on the ground that this action is based upon an instrument for the payment of money only which is now due and payable, and for such other and further relief as to this court may seem just and proper.

The above-entitled action is for non-payment of an instrument for the payment of money owed.

PLEASE TAKE FURTHER NOTICE, that all answering papers shall be served on the undersigned on or before June 23, 2006.


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Dated: New York, New York
May 24, 2006

Yours, etc.,

LEVY, TOLMAN & COSTELLO, LLP
Attorneys for Plaintiff - David Chang
630 Third Avenue
New York, NY 10017
212-949-8770

by: 
Robert J. Costello, Esq.
A Member of the Firm

TO: Charles Koo
Robin Road
Alpine, NJ 07632

4. Pursuant to the agreement reached in New York on October 18, 2001, New York counsel for David Chang sent a letter to Frank Wright, the attorney for Charles Koo, memorializing the settlement between the parties. That agreement was confirmed in writing on November 21, 2001 by Frank Wright, Esq. as counsel for Charles Koo.

5. Pursuant to those written agreements, Mr. Koo agreed to make the first payment of \$100,000.00 to Mr. Chang by the end of calendar 2001. Thereafter, Mr. Koo agreed to pay the remaining \$500,000.00 by making five annual \$100,000.00 payments commencing June 30, 2003.

6. Pursuant to the agreement confirmed in writing by Frank Wright as counsel for Charles, Mr. Koo made the initial \$100,000.00 payment to David Chang.

7. Thereafter Charles Koo failed to make his agreed upon payments on June 30, 2003, June 30, 2004 and June 30, 2005.

8. Based upon Mr. Koo's failure to make the last three \$100,000.00 payments it is anticipated that Mr. Koo will fail to make the \$100,000.00 payments scheduled for June 30, 2006 and June 30, 2007.

9. A demand has been made upon the defendant and his former counsel, Frank Wright, to comply with the terms of the settlement. At my request, Frank Wright provided copies of those letters to me. These letters are annexed hereto as Exhibit

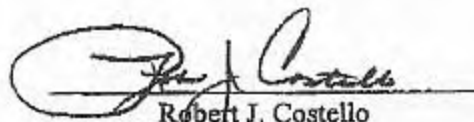
10. The Appellate Division of both the First and Second Departments have determined that the breach of a settlement agreement can form the basis of a motion for summary judgment in lieu of a complaint since it is an instrument for the payment of money only.

Tongkook America, Inc. v Bates, 295 A.D. 2d 202, 743 N.Y.S. 2d 709 (1st Dept, 2002); J.D. Structures, Inc. v Waldbaum, 282 A.D. 2d 434, 723 N.Y.S. 2d 205 (2d Dept, 2001).

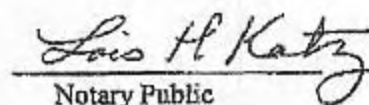
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11. Therefore, plaintiff respectfully requests that judgment be entered against defendant Charles Koo in the amount of \$500,000.00 with interest from July 1, 2003 when Mr. Koo failed to make the necessary payment.


Robert J. Costello

Sworn to before me on this
24th day of May, 2006.


Notary Public

LOIS H. KATZ
Notary Public, State of New York
No. 01KA6002398
Qualified in New York County
Commission Expires February 9, 2008 10

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK-----X
DAVID CHANG

Plaintiff,

Index No.

AFFIDAVIT IN SUPPORT

V.

CHARLES KOO,

Defendants.
-----XSTATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

DAVID CHANG, being duly sworn, deposes and says:

1. I am the plaintiff-movant in this action. In 2001, in New York City, I met with Charles Koo and his attorney Frank Wright to resolve a debt that Mr. Koo owed me personally for monies I had previously advanced to him. The original loan took place in New York City.
2. On October 18, 2001, after meeting with both the lawyers present and directly with Mr. Koo, Mr. Koo and I reached an agreement on a schedule to repay the debt. The meeting took place in the law offices of Mr. Koo's attorney, Frank H. Wright at 641 Lexington Avenue, New York, New York. Mr. Koo and I informed our respective counsel of the terms of the agreement we had reached and Mr. Koo authorized his lawyer to acknowledge the agreement to be drafted by my then attorney Bradley Simon, Esq. A copy of Bradley Simon's confirmation letter to Frank Wright, Esq., defendant's then counsel, is annexed to Robert Costello's affidavit as part of Exhibit A.
3. On November 21, 2001, Frank Wright, Esq., as counsel for Charles Koo, acknowledged Mr. Koo's promise to repay me in accordance with the terms of the agreement

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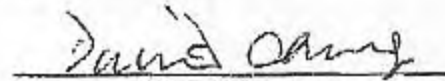
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proposed by Bradley Simon on October 19, 2001. By additional letter, also dated November 21, 2001, Mr. Wright, with my agreement, modified the annual payment date from January 1 to June 30 for years 2003 through 2007. Copies of those letters are annexed to Robert Costello's affidavit as part of Exhibit A.

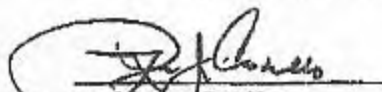
4. I acknowledge that Charles Koo made the first \$100,000.00 payment to me before the end of 2001 by sending the money to my then New York attorney Bradley Simon at his office. After that, however, Mr. Koo has failed to make any additional payments.

5. Since June 2003, I have spoken to Mr. Koo by telephone on a few occasions, concerning his outstanding debt. On each occasion, Mr. Koo has stated that he was going to resume payments and complete the repayment, but he has not done so.

6. The amount of \$500,000.00 remains due me and unpaid by defendant.


David Chang

Sworn to before me on this
24th day of May, 2006.


Notary Public

SM:Matthew COSTELLO
Notary Public State of New York
No. 02CC4743993
Qualified in Nassau County
Commission Expires April 30, 2011
June 30, 2007

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LAW OFFICES OF
BRADLEY D. SIMON
500 FIFTH AVENUE
FOURTY-SEVEN FLOOR
NEW YORK, NEW YORK 10110-4000
bdsimonlaw@aol.com

(212) 730-8900

BRADLEY D. SIMON

RYAN D. WALLER

FAX: (212) 730-8909

October 19, 2001

By Facsimile and U.S. Mail

Frank Wright, Esq.
Frank Wright and Associates
641 Lexington Avenue
New York, NY 10022

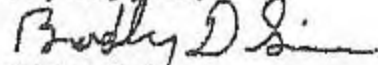
Re: David Chang and Charles Koo

Dear Mr. Wright:

This letter will serve to memorialize the agreement entered into yesterday between David Chang and your client, Charles Koo. As agreed, Mr. Koo will satisfy an outstanding debt of \$600,000 to Mr. Chang as follows: Mr. Koo will immediately pay an initial sum of \$100,000 to Mr. Chang. On or before January 1, 2003 and continuing each year thereafter, through January 1, 2007, Mr. Koo will pay the sum of \$100,000 to Mr. Chang, payable on or before January 1 of each year. Pursuant to the agreement, Mr. Chang waives any and all interest with respect to this debt.

I thank you for your efforts in facilitating the agreement reached between our respective clients.

Very truly yours,


Bradley D. Simon

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**FRANK H. WRIGHT &
ASSOCIATES, P.C.**

ATTORNEYS AT LAW
641 LEXINGTON AVENUE, NEW YORK, NEW YORK 10022

TELEPHONE 212-612-3611
FACSIMILE 212-371-6632

November 21, 2001.

By FAX and Regular Mail

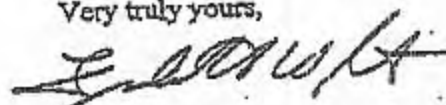
Bradley D. Simon, Esq.
500 Fifth Avenue
Forty-sixth Floor
New York, NY 10110

RE: David Chang and Charles Koo

Dear Brad:

This will confirm our prior telephone conversations in which I stated to you that my client, Mr. Charles Koo, has authorized me to state in writing that he has agreed to settle Mr. David Chang's claim against him. Mr. Koo agrees to repay Mr. Chang in accordance with the terms set out in your letter to me dated October 19, 2001. If you have any questions please call.

Very truly yours,



Frank H. Wright

cc: Mr. Charles Koo

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**FRANK H. WRIGHT &
ASSOCIATES, P.C.**

ATTORNEYS AT LAW
641 LEXINGTON AVENUE, New York, New York 10022

TELEPHONE 212-851-3611
FACSIMILE 212-371-0632

November 21, 2001

By FAX and Regular Mail

Bradley D. Simon, Esq.
300 Fifth Avenue
Forty-sixth Floor
New York, NY 10110

RE: David Chang and Charles Koo

Dear Brad:

This will confirm our conversation today concerning our prior correspondence regarding the agreement between Mr. Chang and Mr. Koo. As I told you Mr. Koo will make the first payment of \$100,000 to Mr. Chang before the end of this year. With respect to the payments to be made in later years, this will confirm that Mr. Koo will make his annual payments to Mr. Chang by June 30th not January 1st of the remaining years in question commencing on June 30, 2003. By copy of this letter to Mr. Koo, I am passing on your request that the payments for the year 2003 be split into two payments of \$50,000 each and that the first such payment be made earlier in the year than June 30th. At the appropriate time I will be back to you with Mr. Koo's response to this request. If you have any questions please do not hesitate to call.

Very truly yours,


Frank H. Wright

cc: Mr. Charles Koo

SUPREME COURT OF THE
STATE OF NEW YORK
COUNTY OF NEW YORK
Index No.
DAVID CHANG,
Plaintiff,
- against -
CHARLES KOO,

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UCS-848 (REV 1/2000)

REQUEST FOR JUDICIAL INTERVENTION

SUPREME COURT, NEW YORK COUNTY

INDEX NO. _____ DATE PURCHASED: _____

PLAINTIFF(S): DAVID CHANG

DEFENDANT(S): CHARLES KOO

For Clerk Only

IAS entry date

Judge Assigned

FJI Date

Date issue joined: _____ Bill of particulars served (Y/N): ☐ Yes ☒ No

NATURE OF JUDICIAL INTERVENTION (check ONE box only AND enter information)

- ☐ Request for preliminary conference
- ☐ Note of issue and/or certificate of readiness
- ☒ Notice of motion (return date: 06/30/06)
Relief sought summary judgment
- ☐ Order to show cause
(clerk enter return date: _____)
Relief sought _____
- ☐ Other ex parte application (specify: _____)
- ☐ Notice of petition (return date: _____)
Relief sought _____
- ☐ Notice of medical or dental malpractice action (specify: _____)
- ☐ Statement of net worth
- ☐ Writ of habeas corpus
- ☐ Other (specify: _____)

NATURE OF ACTION OR PROCEEDING (Check ONE box only)

MATRIMONIAL

- ☐ Contested -CM
- ☐ Uncontested -UM

COMMERCIAL

- ☒ Contract -CONT
- ☐ Corporate -CORP
- ☐ Insurance (where insurer is a party, except arbitration) -INS
- ☐ UCC (including sales, negotiable instruments) -UCC
- ☐ *Other Commercial -OC

REAL PROPERTY

- ☐ Tax Certiorari -TAX
- ☐ Foreclosure -FOR
- ☐ Condemnation -COND
- ☐ Landlord/Tenant -LT
- ☐ *Other Real Property -ORP

OTHER MATTERS

- ☐ * _____ -OTH

* If asterisk used, please specify.

TORTS

- ☐ Malpractice -MM
- ☐ Medical/Podiatric -MM

- ☐ Dental -DM
- ☐ *Other Professional -OPM
- ☐ Motor Vehicle -MV
- ☐ *Products Liability -PL
- ☐ Environmental -EN
- ☐ Asbestos -ASB
- ☐ Breast Implant -BI
- ☐ *Other Negligence -OTN
- ☐ *Other Tort (including intentional) -OT

SPECIAL PROCEEDINGS

- ☐ Art. 75 (Arbitration) -ART75
- ☐ Art. 77 (Trusts) -ART77
- ☐ Art. 78 -ART78
- ☐ Election Law -ELEC
- ☐ Guardianship (MHL Art. 81) -GUARD81
- ☐ *Other Mental Hygiene -MHYG
- ☐ *Other Special Proceeding -OSP